

NEW JERSEY
INDIVIDUAL HEALTH COVERAGE PROGRAM

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MEMORANDUM

TO: Current and Past Member-Carriers of the New Jersey Individual Health Coverage Program and Other Interested Parties
FROM: Wardell Sanders, Executive Director
RE: IMPORTANT NOTICE REGARDING THE IHC PROGRAM LOSS ASSESSMENT REGULATION
DATE: December 2, 2004

IMPORTANT NOTICE

This memorandum is to advise current and past member-carriers of the New Jersey Individual Health Coverage ("IHC") Program and other interested parties that the IHC Board has placed on its December 14, 2004 meeting agenda a discussion about its loss assessment regulation. A portion of that rule, set forth at N.J.A.C. 11:20-2.17, was invalidated by the New Jersey Supreme Court. The Court invalidated the IHC Board's methodology of apportioning the "second-tier" calculation of the loss assessment among non-exempt carriers. It also invalidated the good-faith marketing requirement, which the IHC Board had applied to any carrier seeking an exemption from its loss-assessment liability but that failed to satisfy at least half of its enrollment target.

The Court's decision is reported at 179 N.J. 570 (2004). It may also be found at: <http://lawlibrary.rutgers.edu/courts/supreme/a-46-02.opn.html>. In light of the Court's decision, the IHC Board has granted one carrier's appeal of the 1997/1998 and 1999/2000 loss assessments, and has also granted a second carrier's request for a 27.2 percent exemption from the 1996 loss assessment.

ANY NEW RULEMAKING REGARDING THE LOSS ASSESSMENT MAY HAVE A SIGNIFICANT IMPACT ON EACH MEMBER-CARRIER'S PAST AND PROSPECTIVE LOSS ASSESSMENT LIABILITY AND LOSS REIMBURSEMENT REFUND AMOUNT. PLEASE READ THIS MEMORANDUM CAREFULLY AND FORWARD A COPY TO ANY PERSON IN YOUR OFFICE THAT YOU BELIEVE SHOULD REVIEW THIS MEMORANDUM.

The Board's December 14, 2004 meeting is open to the public. It will begin at 10 a.m. and will be held in Room 218 of the Mary Roebling Building at 20 West State Street

in Trenton. In order to receive informal public input as permitted under N.J.A.C. 1:30-5.3(a), the Board would like to give interested parties the opportunity to provide comments regarding: (1) alternative methodologies to the Board's invalidated second-tier loss assessment regulation; and (2) the calculation periods to which such new assessment methodology should apply. For your reference, the IHC Board has assessed under N.J.S.A. 17B:27A-12 since 1993. If you wish to present oral comments at the meeting, please contact me no later than December 10, 2004. Please limit your comments to ten minutes. If you wish to provide your input to the Board in writing, please submit your letter in electronic format to me no later than noon on December 13, 2004.

The IHC Board has already received input from some interested parties. For your information, paraphrased below are two suggestions:

- **Suggestion No. 1:** Assessment liability would be determined by multiplying each carrier's market share by the aggregate net paid losses for that period, except that a carrier that earned an exemption would be entitled to a reduction in its loss liability based on the level of its satisfaction of its non-group enrollment target. No "second-tier" assessment would be calculated to recoup funds not collected due to the grant of exemptions. *As a result, any carrier with reimbursable losses as defined at N.J.S.A. 17B:27A-12a(1)(b) would not be reimbursed fully for those losses, to the extent any carrier qualified for an exemption from its loss assessment.*
- **Suggestion No. 2:** Assessment liability would be determined by multiplying each member's market share by the aggregate net paid losses for that period, except that the Board would determine each member's market share by dividing the member's "adjusted" net earned premium for the period by the adjusted net earned premium of all members for the period. For a carrier that was not granted an exemption, its adjusted net earned premium would equal its net earned premium as reported in its Exhibit K. For a carrier that was granted an exemption by the Board, its adjusted net earned premium would be determined by multiplying its reported net earned premium by the percentage of non-group market target that it did not meet. *Under this method, a carrier with reimbursable losses would be reimbursed fully for its losses.*

Please let me know if you have any questions.

W.S.